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No. _____

In The

Supreme Court of the United States

MICHAEL FISHER,

Petitioner,

v.

STATE OF TEXAS

On Petition For A Writ Of Certiorari To The Supreme Court Of Texas

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Texas statute for the civil commitment of sexually violent predators, which relies heavily on criminal penalties and procedures to punish the mentally ill, is punitive and therefore requires appropriate due process protection.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Michael Fisher respectfully petitions for a writ of certiorari to review the judgment of the Texas Supreme Court in this case.

OPINIONS BELOW

The Texas Supreme Court's opinion is available at 164 S.W.3d 637, publication pending. The appendix reproduces the Court's opinion. Pet. App. 1. The Texas Thirteenth Court of Appeals' opinion is published at 123 S.W.3d 828. Pet. App. 38. The judgment of the 248th District Court of Montgomery County is unpublished. The Final Judgment and Order of Commitment is reproduced in the appendix. Pet. App. 7a.

JURISDICTION

The Texas Supreme Court issued its opinion on May 20, 2005. This Court has jurisdiction under 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth Amendment of the United States Constitution provides in relevant part, "No person . . . shall be compelled in any criminal case to be a witness against himself." U.S. CONST. amend V.

The Fourteenth Amendment to the United States Constitution provides in relevant part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1.

The Texas statute governing the civil commitment of sexually violent predators is TEX. HEALTH & SAFETY CODE §§ 841.001 *et seq.* (Vernon 2004). The statute is reproduced in its entirety in the appendix. Pet. App. 102-133.

STATEMENT

This case involves the constitutionality of the Texas Civil Commitment of Sexually Violent Predators statute. Petitioner was committed under this statute but alleges it denies him due process of law.

1. The Texas Civil Commitment of Sexually Violent Predators Statute (hereinafter Texas SVP Act) was enacted in 1999. The legislature found, "a small but extremely dangerous group of sexually violent predators exists and that those predators have a behavioral abnormality that is not amenable to traditional mental illness treatment modalities and that makes the predators likely to engage in repeated predatory acts of sexual violence." TEX. HEALTH & SAFETY CODE § 841.001. The stated purposes of the statute are "the long-term supervision and treatment of sexually violent predators." *Id.*

The Texas SVP Act orders committed individuals to be treated in an outpatient setting rather than in a secure

mental facility. *Id.* § 841.081. Commitment requirements are imposed to ensure those in the program comply with their treatment and do not re-offend. *Id.* § 841.082. To enforce the commitment requirements, an individual may be prosecuted for a third degree felony for any violation of commitment, even for an act that is not, in itself, criminal. *Id.* § 841.085. Committed individuals must remain in outpatient treatment and "may not be housed for any period of time in a mental health facility, state school, or community center." *Id.* § 841.083.

Those eligible for commitment include those convicted of more than one sexually violent offense and those found not guilty by reason of insanity for a sexually violent offense. *Id.* § 841.003. Commitment cases are prosecuted by the Prison Prosecution Unit and defended by State Counsel for Offenders. Both entities generally prosecute and defend cases that arise within the Texas Department of Criminal Justice (TDCJ). *Id.* §§ 841.004, 841.005. A Multidisciplinary Team, comprised of two persons from the Texas Department of Mental Health and Mental Retardation, two persons from TDCJ (one of whom must be from the victim services office), one person from the Texas Department of Public Safety, and two persons from the Council on Sex Offender Treatment, may recommend an eligible individual for commitment. *Id.* § 841.022. The offender is then given a behavioral assessment that can lead to a referral to the prosecuting attorney. *Id.* § 841.023. Petitions alleging predator status are filed in Montgomery County, Texas, in a district court. *Id.* § 841.041. A trial is held to determine whether an individual is a sexually violent predator beyond a reasonable doubt. *Id.* § 841.062.

Once committed, an individual is given an examination and judicial review on a biennial basis. *Id.* §§ 841.101,